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STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

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APPEARANCES

BOARD MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrell

Mr. Chon Gutierrez

Ms. Laurie McBride

Mr. John Mott-Smith

Mr. Bernard Soriano

STAFF

Ms. Dawn Mehlhaff, Voter Outreach Programs Director

Ms. Brianna Lierman

Mr. John Saufilipo

Mr. William P. Wood, Elections Counsel

ALSO PRESENT

Ms. Kim Alexander, California Voter Foundation

Mr. Alfie Charles, Sequoia

Mr. Joe Holder, Stanislaus County

Mr. Keeling, Sequoia

Mr. Jim March

Ms. Deborah Seiler, Diebold

Ms. Maureen Smith, Santa Cruz County

Ms. Kim Zetter, Wired News

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CHAIRPERSON KYLE: Why don't we get started since we have a number of folks here. I'm Mark Kyle. I'm the Chair of the ESP, and I want to thank everyone for being here this afternoon. As I mentioned before, we are absent Ms. Terri Carbaugh and Laurie McBride. Laurie should be joining us in a minute so we can go from there.

Has everyone in the audience gotten an agenda that's interested? They were available, I believe, at the front. Okay.

Then I'd like to move forward with the first report on the Sequoia Voting System.

Ms. Mehlhaff, will you please have staff make the presentation.

VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: John Saufilipo to my right will handle the first agenda item today.

PANEL MEMBER SAUFILIPO: Hi. Good afternoon.

Sequoia Voting Systems has come forward to request a certification of modifications to their voting system. And those modifications include WinEDS election management software version 3.0, Firmware Version 4.1J, and Firmware Version 4.2, and Hardware Version 4.0. It's going to take some time to go over some of these new features, and we're going to begin with WinEDS Version 3.0

1 software.

2 Currently the Edge voting machine is not able to
3 process provisional ballots electronically so voters cast
4 their provisional ballots on paper. This modification
5 will permit tabulation of provisional ballots
6 electronically.

7 WinEDS Version 3.0 software will also offer other
8 features. It will offer a quick way to establish new
9 installations and to migrate existing WinEDS 2.6
10 databases. It will also allow counties to install system
11 upgrades more readily. And it will also allow integration
12 with the Optech 400C scanner. The upgrade would allow
13 integration of the use of version 3.0 software. Would
14 also allow for the upgrade to allow for the integration of
15 DRE and the Optical Scan results.

16 Firmware Version 4.1J will also add new features.
17 It will add a manual recount function. Under the current
18 system, these ballots are not actual images of the ballot,
19 but are instead listing of the ballot positions. They use
20 a number to identify a candidate. The proposed
21 modification would make it easier to conduct a recount and
22 also to observe that it is being conducted accurately
23 because the ballot images with 4.1J Firmware would include
24 the names of the candidate instead of just these position
25 numbers. Additionally, this simplification of ballot

1 images supports the manual recount function by providing a
2 more readable audit trail than what currently exists.

3 Firmware Version 4.1J will also add pre-election
4 hardware diagnostic tests. And summarizing, that would
5 just enable additional internal checks to ensure that the
6 hardware is functioning properly prior to operating the
7 machine for an election.

8 Hardware Version 4.1J also adds an off-ballot
9 candidate type. This feature would allow a candidate's
10 name to remain on the ballot, but prohibit the voter from
11 selecting this candidate. The requirement to place a
12 candidate's name on the ballot even though the candidate
13 has dropped out of the contest is a requirement in some
14 states. It is not a current requirement in the state of
15 California, and that feature would not be used. But that
16 option would be available under this Firmware Version.

17 Under Firmware Version 4.2, the current Version
18 of the certified Firmware cannot display the ballot review
19 screen in required languages. Firmware Version 4.2 will
20 allow for this option -- allow for this feature which is
21 needed to display multiple languages in the review screen,
22 specifically Chinese and Vietnamese languages.

23 Hardware Version 4.0 modifications would -- there
24 are several technical upgrades that have been reviewed by
25 our consultant and found to be minor in nature. These

1 technical upgrades include increasing the internal and
2 removable flash ROM capacity from the current 32 megabytes
3 to 2 gigabyte memory, the higher performance central
4 processing unit board to accommodate added functionality
5 and to improve the speed the computer functions. Hardware
6 4.0 also revises and simplifies mounting for the central
7 processing unit board to make maintenance upgrades easier.

8 In addition, the surface of the touch screen
9 where the voter makes his or her selection has been
10 modified to be more sensitive to touch under Hardware
11 Version 4.0.

12 All federal and state testing has been conducted
13 on WinEDS 3.0.99, Firmware 4.1J, and 4.2, and Firmware --
14 excuse me -- Hardware 4.0. Elections Division at the
15 Secretary of State's Office has conducted the review and
16 proposed system modifications required by statute
17 including testing and review by an independent consultant
18 and recommends approval of the proposed modifications to
19 Edge Firmware 4.1J, Edge Firmware 4.2, and Edge Hardware
20 Version 4.0.

21 Approval of WinEDS 3.0.99 will be subject to the
22 following conditions. WinEDS 3.0.99 may not be used with
23 the Optech 400C until further testing is conducted by the
24 state's consultant. The EMS Arrow election management
25 software currently in use with the Optech 400C should be

1 used until a corrected Version of WinEDS 3.0 is certified
2 and available. The WinEDS maybe used to initially create
3 the election definition, and the definition be transferred
4 to the EMS Arrow to prepare the Optech's election program.

5 At this time that concludes the staff
6 presentation.

7 CHAIRPERSON KYLE: Are there questions from the
8 panel?

9 I'll start on my right. Mr. Soriano.

10 PANEL MEMBER SORIANO: Yes. I had a couple
11 questions.

12 I'm mainly concerned around the tests that were
13 conducted in the staff report. You have that using the
14 Version 3.0.99 system, the software did not indicate
15 correct rotation of candidates when using the Optech 400C.
16 Can you elaborate more on that?

17 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
18 Essentially what happened is when they were doing -- this
19 is a ballot layout issue. When they were using the new
20 software -- and initially this is slated for the DRE unit.
21 Well, some counties use Sequoia Optical Scan Unit. So
22 when they were doing the ballot layout in the software and
23 transferring the image, basically, to print the ballot for
24 Optical Scan, it wasn't producing a clean image. Stuff
25 was shifting. It just wasn't producing a ballot that

1 would be read appropriately on the scanner. It's a minor
2 issue, but it's still an issue, and that is why we placed
3 the condition on this. It wasn't a tabulation issue or
4 anything like that. It's basically a ballot layout.

5 So the recommendation is they can still use the
6 software to start that generation in terms of for the DRE
7 layout, in terms of how the candidate's names appear, but
8 to feed this data through the existing software they use
9 to set up the Optical Scan stuff, and that was a clean
10 transfer. And that it was tested that way by our
11 consultant, using the existing software that is in place
12 now using the software that's in front of you today to
13 input the original data. And they transferred that to a
14 second set of software that's currently certified and used
15 now. Then that would be able to generate the ballot in
16 the correct layout for the Optical Scan. In terms of the
17 DRE, it functioned fine.

18 PANEL MEMBER SORIANO: So that's the basis for
19 the conditional recommendation that you have?

20 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
21 Correct. Our consultant has discussed it with Sequoia.
22 And it's a minor tweak essentially, a minor modification.
23 But it needs to be fixed in order for us to feel
24 comfortable using that Optical Scan system.

25 PANEL MEMBER SORIANO: Thank you.

1 CHAIRPERSON KYLE: Mr. Smith.

2 PANEL MEMBER MOTT-SMITH: No.

3 CHAIRPERSON KYLE: Mr. Gutierrez.

4 PANEL MEMBER GUTIERREZ: Yes. I do have a
5 question. I'm trying to figure out how to phrase it best.
6 I can talk loud. Thank you.

7 As I try to conceptualize the process for the
8 provisional vote, I'm visualizing a serial number assigned
9 to a vote that's trackable to a voter. How do we ensure
10 that we are not setting up a system where the voter's
11 action can be traced right back to him or her?

12 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
13 Essentially the way that the process works now with
14 provisional ballots, the voter, when they go into a
15 precinct that uses DREs, they will be given a paper
16 ballot, essentially an absentee ballot that that county
17 uses. The voter will vote a provisional ballot using the
18 paper ballot, will sign the envelope. The ballot goes
19 into the envelope and is sent back to central election,
20 which it is then determined that voter's eligibility.

21 At that time once they look at the envelope and
22 it's determined that voter is eligible, the ballot will
23 then become separated from the envelope. The ballot will
24 go one direction. The envelope will go another direction.
25 So essentially, you know, two different paths at that

1 point once the voter's eligibility is determined.

2 In this case, what they have proposed in terms of
3 handling provisional voters is the provisional voter will
4 go into the precinct. They still get that envelope where
5 they will indicate on there all the information that they
6 would now. They're able to vote on the DRE unit. At that
7 time there's basically a number, a serial number, assigned
8 to that voter's ballot that's been cast in the DRE. That
9 number is also going to be recorded on that envelope so
10 that it can be tied together in the same way it's tied now
11 if you have the paper ballot and the envelope.

12 The only difference here is that I think this is
13 a little more secure in terms of preserving the secrecy of
14 the voter. Because when the election official is going
15 through those, they're looking at the envelopes, and it
16 gives them a number. And that number will come up on
17 their screen, but at this time all of the information in
18 terms of how the voter voted is suppressed. They cannot
19 see that. That is not available to them at that time.
20 All they see is the number. They have the numbers in
21 there, and it matches the number on the envelope.

22 That basically goes into another holding area.
23 And as they're going through and they're processing all of
24 these, the ones they determine are valid are going into a
25 separate holding area electronically. And once they've

1 gone through 100 ballots or 200 provisionals or however
2 many they're processing, then all those at the same time
3 will be added to the vote total. So it's kind of a batch
4 system, the same way it happens now in the sense that that
5 ballot is separated from the envelope and those are
6 stacked and run in together. This is the same process.

7 So it's not visible the way the voter voted.
8 It's not visible to the election official. And that
9 number is basically what determines the ballot that's
10 released into that holding area that will then be
11 processed after this process is completed.

12 PANEL MEMBER GUTIERREZ: Thank you.

13 Just again to make sure I'm clear in my mind
14 though, some programmer can program in a serial number that
15 matches a person's name and can determine how that voter
16 voted?

17 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: It's
18 not tied to the actual -- the voter. When they come in,
19 there's a number on the absentee or the provisional
20 envelope.

21 PANEL MEMBER GUTIERREZ: The voter's name's on
22 the envelope?

23 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Well,
24 there is. But the database that comes up, that's not tied
25 to the individual voter, just the number.

1 PANEL MEMBER GUTIERREZ: As long as we keep those
2 two things separate, you can't tie it --

3 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Once
4 it goes into the batch, the number is removed.

5 PANEL MEMBER GUTIERREZ: You can't identify it?

6 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: At
7 the beginning stage, correct. You have the envelope with
8 the number and you have the ballot with the number. Once
9 that is deemed appropriate, that goes into a separate
10 holding area and that number comes off of it. So you
11 cannot go back tomorrow and say, "Let's go and pull this
12 person's ballot," because now that's been removed from it
13 after it's been deemed valid. So no, you cannot go back
14 and trace it and find that particular voter.

15 Does that make sense?

16 PANEL MEMBER GUTIERREZ: Only if the envelopes
17 are destroyed.

18 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: No,
19 because you'll still have the envelope and there will be
20 an ID number attached to that.

21 PANEL MEMBER GUTIERREZ: Which is the same as the
22 ballot.

23 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Well,
24 no. It's different. You have -- maybe I'm just not
25 explaining this correctly. You have the envelope. And

1 there's a number 123 assigned to that envelope. And
2 basically in the database you're going pull up ballot
3 number 123. You're not going to see the actual ballot.
4 So you're not going to see the voter's choices.

5 PANEL MEMBER GUTIERREZ: With all due respect,
6 who is "you"?

7 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: The
8 election official will pull that up. They see that ballot
9 123 is, in fact, in there. They determine that one ballot
10 that belongs to, you know, John Smith assigned number 123
11 is, in fact, valid and it should be counted. So at that
12 point they will basically -- they'll get a screen that
13 says yes, count this or no. It separates, and that 123 is
14 now removed from that ballot.

15 PANEL MEMBER GUTIERREZ: Thank you. That was
16 very helpful.

17 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Okay.

18 CHAIRPERSON KYLE: Do you have any other
19 questions?

20 PANEL MEMBER GUTIERREZ: No.

21 CHAIRPERSON KYLE: Mr. Carrel.

22 MR. CARRELL: I was going to ask the same
23 question to clarify.

24 I'm wondering how many jurisdictions will have
25 to -- will utilize this system and thus will have to be

1 modified based on it?

2 PANEL MEMBER SAUFILIPO: Could you repeat the
3 question?

4 PANEL MEMBER CARRELL: How many jurisdictions
5 currently using this Sequoia voting system ABC Edge
6 machine, and thus how many will need to be modified?

7 CHAIRPERSON KYLE: What are those jurisdictions?

8 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
9 know the vendor is here as well.

10 Currently in terms of -- several of them use the
11 Optical Scan. But in terms of state or countywide
12 deployment, there's two counties in the state that use the
13 Sequoia DRE, Shasta County and Riverside County. Santa
14 Clara County plans to deploy these and use these in the
15 November election. They're the ones that will use this
16 immediately in terms of foreign language capability for
17 the review screen.

18 PANEL MEMBER CARRELL: So Shasta and Riverside
19 are not planning on modifying before -- do they have
20 November elections or not?

21 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
22 don't believe they're planning on doing it, but I will
23 defer to the vendor for clarification.

24 PANEL MEMBER CARRELL: Mr. Charles, do you have
25 a --

1 MR. CHARLES: Sorry. It's an option for the
2 counties. This upgrade does not render the existing
3 system obsolete. It adds additional functionality. It's
4 up to the county to determine what they would like to use
5 and what they would like to run. We anticipate most of
6 the counties will be using the most up-to-date software
7 and firmware that's available to them.

8 Currently we have Riverside and Shasta County.
9 Santa Clara would like to use this version for November.
10 They will need to use it for the multiple language review
11 screen. And additional counties that will be using this
12 will be San Bernardino, Napa, and Tehama Counties.

13 PANEL MEMBER CARRELL: And Shasta and Riverside,
14 which currently have your system in place, are they
15 planning on modifying it before November?

16 MR. CHARLES: I don't believe they're planning on
17 modifying it before November. Riverside doesn't have a
18 November election. Shasta will be using what they use.

19 PANEL MEMBER CARRELL: Thank you.

20 CHAIRPERSON KYLE: Other questions, Mr. Carrell?

21 PANEL MEMBER CARRELL: No.

22 CHAIRPERSON KYLE: Ms. McBride.

23 I have a couple questions. On page 3 of the
24 reported, John and Dawn talked about the current system,
25 the ballots are not the actual images. And then it goes

1 on to say that the modifications would make it easier to
2 conduct a recount and to observe that it's being
3 accurately done. Those ballot images would include
4 candidates instead of just position numbers. Does the
5 modified or the proposed modification of candidate names
6 include position numbers? Is it one or the other or is it
7 both? And more importantly, is that an actual image?
8 Since we know it's not an actual image in the current
9 system, is it an actual image in the modified system?

10 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
11 believe it will show both. It will show the candidate's
12 name or you can program it to do both in terms of the
13 position.

14 MR. CHARLES: It would be the candidate's name.
15 It would show the -- right now the audit trail -- the
16 paper audit can be generated three different ways. The
17 version generated out of the Edge machine itself shows the
18 numerical representation of candidates. This will change
19 that to be a text version of the candidate's name so it
20 will be easier for election officials to utilize. That
21 should speed the manual recount for counties during the
22 1 percent manual recount and during the full recount, if
23 they choose to print the images from the touch screen.

24 CHAIRPERSON KYLE: So it's not an actual image
25 still?

1 MR. CHARLES: If I may.

2 CHAIRPERSON KYLE: Unless the staff can answer.

3 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: It's
4 not going to be an image in the sense that it's going to
5 be like a bit map image, no. It's basically going to be a
6 printout of each candidate. I mean, it's what we call a
7 ballot image that lists the candidates and yes, no.
8 Opposed to the way it is now where it's just kind of a
9 series of numbers and it's kind of cryptic and difficult.
10 The registrars can do the manual count, but it takes more
11 time.

12 CHAIRPERSON KYLE: I understand the difference.
13 I'm just trying to -- there's an affirmative statement
14 that one is not an actual image, and then there's no
15 statement on the second one where it is or isn't. I'm
16 trying to get it is or it isn't. It sounds like it isn't.
17 It's different than Version A. And you're telling me that
18 because of the difference, the recount will be easier.
19 But it's still not an actual image. I'm just trying to
20 get to that point.

21 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Go
22 ahead.

23 MR. CHARLES: Both of them are images. One of
24 them is an image that is numerically represented based on
25 ballot position. The other is an image based on readable

1 text using the voter's name and the office title. So they
2 are both identical images of the ballot.

3 CHAIRPERSON KYLE: Identical images.

4 MR. CHARLES: Meaning --

5 CHAIRPERSON KYLE: Are they actual images?

6 MR. CHARLES: Yes. They are images of the --

7 CHAIRPERSON KYLE: So if the first one's
8 identical image, then why are we saying it's not an actual
9 image?

10 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
11 think that was an error in the staff report. The
12 significant difference on this modification is that
13 instead of the candidate ID number appearing, the
14 candidate's name will appear. That is the significant
15 difference between the existing system and the
16 modification.

17 CHAIRPERSON KYLE: It goes on to say that the
18 simplification of the ballot images supports the manual
19 recount. I think we addressed that.

20 It mentioned that under the pre-election
21 diagnostic test -- if you could just elaborate on this for
22 a minute. The use of improved pre-election hardware
23 diagnostic tests will enable additional internal checks to
24 ensure hardware is functioning properly. Can you give me
25 a short version of how that's done without being

1 hypertechnical so only Bernard understands what you're
2 talking about, who's our IT director.

3 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: You
4 wrote the report. Do you want to take it?

5 PANEL MEMBER SAUFILIPO: I don't know the answer
6 to that question.

7 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
8 Essentially, you know, the systems all have adequate
9 testing functions now, otherwise they wouldn't be
10 certified. This just allows some additional testing to be
11 done so they can determine that if the system has a
12 shutdown in terms of battery or someone knocking it over
13 and it's disconnected from a battery source or an outlet,
14 that it will shut down without losing any votes, opposed
15 to just going into an error mode.

16 So they can kind of flip this so that if there's
17 some type of malfunction in terms of it's separated from a
18 power source or something like that, that it will just
19 kind of turn itself off with saving everything that's
20 there, opposed to giving the poll workers a flashing
21 screen. This is just a minor thing in terms of the
22 modifications to it. It's just more of a check and
23 balance. It's not a very significant feature.

24 CHAIRPERSON KYLE: Is it one or two more tests,
25 or three more?

1 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
2 don't know the actual number of the tests. Like I said,
3 John wrote the report with the consultant.

4 Does the vendor wish to address this? He's
5 looking at his technical guy.

6 MR. KEELING: Yes. Basically what the additional
7 diagnostic does is tests the internal memory of the
8 machine, the flash, and the RAM memory to make sure that
9 it's functional and clear.

10 CHAIRPERSON KYLE: Thank you. That's pretty
11 clear.

12 I'd like to solicit questions or comments from
13 the vendor and audience members. There's no more
14 questions from the panel.

15 Anything additional that the vendor would like to
16 add?

17 MR. CHARLES: No. I think you covered it pretty
18 thoroughly. If there are questions that come up after the
19 public comments, I'd be happy to address those.

20 CHAIRPERSON KYLE: Are there any representatives
21 from the counties affected by this proposed modification?
22 Is anyone from Santa Clara or the other counties?

23 Okay. Then I'll open with questions and comments
24 germane to this agenda item, please.

25 Sir, would you identify yourself for the record.

1 State your name.

2 MR. MARCH: Jim March. My question is this: The
3 terminals on the Sequoia System, what version of Windows
4 are they running?

5 MR. KEELING: The DRE system does not run
6 Windows. It runs a proprietary operating system.

7 MR. MARCH: And that proprietary operating system
8 has been run through certification, of course? It's built
9 in the firmware then, it's part --

10 MR. KEELING: Yes. It's built into the firmware,
11 and it just went through certification.

12 MR. MARCH: Okay. Good. What operating system
13 is the central box -- the central vote tabulation machine?

14 CHAIRPERSON KYLE: Before you answer that --
15 Mr. March, would you mind identifying any group you're
16 with? And also just for future reference, we'd appreciate
17 it if you would identify questions that you have and run
18 them through the Chair. That way we can allocate the
19 right amount of time and make sure they're germane to the
20 topic. I want to keep this as open as possible. However,
21 you seem to have a number of questions, and I just want to
22 make sure we're not --

23 MR. MARCH: Those are my only two at this point.

24 CHAIRPERSON KYLE: So do you want to finish that
25 one?

1 MR. KEELING: Windows NT and 2000.

2 CHAIRPERSON KYLE: I don't mind more. Just for
3 process purposes, it's being pointed out to me --

4 MR. MARCH: We're done.

5 CHAIRPERSON KYLE: -- it needs to be run through
6 me.

7 Ma'am.

8 MS. ZETTER: Kim Zetter, Wired News.

9 I have a follow-up question to ask. If you're
10 not running Windows on the system, where is the Windows CE
11 running?

12 MR. KEELING: I couldn't hear your question. I'm
13 sorry.

14 MS. ZETTER: You're not running Windows CE on a
15 system. You're not running Windows on the system. Where
16 is the Windows CE running?

17 MR. KEELING: Where is what running?

18 MS. ZETTER: Windows CE.

19 MR. KEELING: That's running on the election
20 management system.

21 MR. MARCH: Windows CE -- no. Windows 2000 is
22 not --

23 MR. KEELING: Windows 2000.

24 CHAIRPERSON KYLE: I thought I saw a question.

25 MS. SMITH: Maurine Smith, Santa Cruz County. I

1 have two questions on the Windows. One is, are you
2 planning to get out of the Microsoft Windows system, which
3 is highly applicable, or have you gotten out of the
4 Microsoft Windows system for your counting the votes on
5 the WinEDS software and --

6 CHAIRPERSON KYLE: Can you hold on a second so we
7 take the questions one at a time? What I don't want to do
8 is engage in a let's question the vendor while he's
9 sitting here, because you can do that on your own time.
10 You're welcome to call him up morning, tonight, over the
11 weekend. Call them any time you want.

12 If this is a question germane to the issue before
13 the panel now, then that's appropriate. I'd like to
14 direct it, have my staff write it down. If it's something
15 that we can answer, then we can answer it if we think it's
16 germane. If it's not, we can research it and attempt to
17 answer it or frame a response to you that says, "Thanks
18 for your question. It's right on point. Here's the
19 answer to it. We double checked with the vendor. We did
20 the research. We checked with our independent
21 consultants. And here's the answer to that we believe
22 directly responds to your question."

23 This goes to you too, Mr. March, and the other
24 question.

25 If it's not we can say, "Hey, this doesn't fall

1 into this particular bailiwick, and why don't you pursue
2 an independent conversation with the vendor or the
3 counties or whomever, and here's some leads to answer that
4 question."

5 So are folks taking copious notes down here?

6 Do you want to restate your question then,
7 please, the first one?

8 MS. SMITH: Yes. It will maybe be more than one
9 question. Are you using Microsoft Windows on your WinEDS
10 software to count the votes?

11 CHAIRPERSON KYLE: The WinEDS software that we're
12 talking about here being modified. Okay. And Windows --

13 MS. SMITH: Microsoft Windows.

14 CHAIRPERSON KYLE: Any particular version?

15 MS. SMITH: Doesn't matter what Version.
16 Microsoft Windows is much more exposed to hackers than
17 some other systems are.

18 CHAIRPERSON KYLE: Staff, can you answer that
19 question?

20 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: The
21 units that are deployed at the polling places are
22 basically stand-alone units, and that's what the firmware
23 and the hardware -- as the vendor stated that's
24 proprietary software. It's not tied to any other third
25 party software. That's Sequoia software running on those

1 units. In terms of the --

2 CHAIRPERSON KYLE: So no, it's not running
3 Windows.

4 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: At
5 the polling place on the DREs.

6 In terms of the central tabulation unit, the
7 county elections office, they have WinEDS loaded onto a
8 system -- an operating system, and they're using -- my
9 understanding, most of them use Microsoft Windows as the
10 operating system. They're loading this WinEDS on there.
11 That's what they're using for their ballot layout and vote
12 tabulation. It's independent, but it is operating on that
13 system.

14 And you know, I'd be happy for the vendor to
15 correct me if I'm incorrect on that. But they are
16 separate. It's just an operating system in which it runs
17 on. But WinEDS doesn't use components of Windows to
18 tabulate its results. WinEDS is the program that does
19 that. And that has gone through testing, both federal and
20 state level.

21 MS. SMITH: Does that mean it's because the
22 counties are using Microsoft Windows? Either the vendor
23 uses it or the counties use it?

24 PANEL MEMBER CARRELL: Mr. Chair, I'm not clear
25 how this relates directly -- that question at least

1 relates directly to the item we're dealing with here,
2 which is certification of the modification to the Sequoia
3 System. And I think what the questioner is getting to is
4 the implementation of the vote tabulation software, which
5 is not what we're addressing here. But we're dealing with
6 both firmware, hardware, and other aspects of the system.
7 So I think that's a question that may be valid, but isn't
8 directly related to what we're dealing with on point. So
9 I don't know how much that relates to what we're dealing
10 with.

11 CHAIRPERSON KYLE: How about if we capture your
12 question and try to answer it.

13 So is that question noted?

14 And if we can get your --

15 MS. SMITH: Because I have a document -- a report
16 from Riverside County saying that it is run on Microsoft
17 Windows, and I'm trying to check the things that I have in
18 this report.

19 CHAIRPERSON KYLE: Okay. Maybe I can suggest
20 that you could come up after the meeting, meet with staff,
21 and we could either -- if you have only a handful of
22 questions, you can recite them orally, or if there's more,
23 we can make arrangements for a list of questions with
24 maybe a reference to the report that you have so we can
25 look at that as well. And if you can say, hey, look,

1 here's eight or nine or whatever it might be, and we could
2 have a dialogue that way.

3 MS. SMITH: Can I have one more question on a
4 different part of this?

5 CHAIRPERSON KYLE: I'll let you ask it, and we'll
6 see if it's appropriate.

7 MS. SMITH: I'm not clear when a paper trail is
8 mentioned regarding this upgrade whether or not that's a
9 voter-verified paper trail. In other words, one that the
10 voter will get to see how they voted and change how they
11 voted, if necessary, and then it will go on to be part of
12 an audit trail, or if it's simply something that is
13 regurgitated from the software with no voter verification.

14 CHAIRPERSON KYLE: Staff, would you care to take
15 a crack at that?

16 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: The
17 paper representation of the ballots are an issue in terms
18 of the manual 1 percent recount, which is currently
19 required under California law. So that reference was in
20 the staff report. The system does not include a voter
21 variable paper audit trail, and currently there's no
22 requirement to do so.

23 PANEL MEMBER CARRELL: Can I point out I'm
24 looking at staff's report, it says that this WinEDS
25 Version 3.0 is compatible. If the voter verified paper

1 trail were to be required, then the provisional ballots
2 would be notated on the voter verified paper trail so that
3 the voter would know it was provisional and it can be
4 counted that way; correct?

5 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:

6 Correct. But the system would have to seek additional
7 testing for the modification.

8 PANEL MEMBER CARRELL: Any modification to the
9 voter verified paper trail would have to receive
10 certification, qualification from the Fed before it could
11 be used because currently there is no voter verified paper
12 trail certified in California?

13 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:

14 Correct.

15 CHAIRPERSON KYLE: Does that answer your
16 question?

17 MS. SMITH: Thank you.

18 CHAIRPERSON KYLE: Any other questions?

19 Kim.

20 MS. ALEXANDER: I'm trying to get clear on the
21 paper trail. Is it the case that currently in Riverside
22 that the paper ballots image that they're using to conduct
23 the 1 percent manual count do not have the candidates'
24 names on those ballot images, that they have numbered
25 positions and that this modification is going to now

1 actually put the candidates' names rather than their
2 ballot position number onto those printed ballot images
3 used for the 1 percent manual count? Is that what's
4 happening?

5 CHAIRPERSON KYLE: That's what it sounds like.
6 Staff.

7 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: This
8 system does allow for the candidate's name to appear on
9 the printout for the manual 1 percent recount.

10 PANEL MEMBER CARRELL: If Riverside seeks the
11 modification.

12 MS. ALEXANDER: But currently when they conduct
13 the manual counts, the candidates' names are not on those
14 printed ballot images that they tabulate to conduct the
15 manual count.

16 CHAIRPERSON KYLE: That's my understanding.
17 Staff.

18 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
19 Correct.

20 MS. ALEXANDER: That's correct.

21 And then my second question is, does the voting
22 systems' panel have any kind of policy about provisional
23 ballots and whether it's appropriate for them to be -- to
24 exist in an electronic format or whether they need to be
25 on paper? Because it seems to me there's a more

1 fundamental policy question here that this panel needs to
2 address about the appropriateness of whether those
3 ballots -- those provisional ballots, which are questioned
4 about whether they're valid or not, whether we can verify
5 them and validate them more safely as a paper document or
6 as an electronic document. I see Mr. Gutierrez nodding
7 his head so I'm curious --

8 PANEL MEMBER GUTIERREZ: Good question.

9 CHAIRPERSON KYLE: It is a good question. I
10 think it deserves a good response. So Ms. Alexander, I'm
11 going to take note, and we'll get a response to you.

12 MS. ALEXANDER: Thanks.

13 CHAIRPERSON KYLE: I don't think we can answer
14 that today, quite honestly. I'd have to consult with
15 folks and talk with them, but it is a good question.

16 PANEL MEMBER CARRELL: Can I ask that question be
17 considered for -- can we get a response before the next
18 meeting?

19 CHAIRPERSON KYLE: Yeah. Absolutely, we should
20 have a response. In fact, I would say we should try to
21 have a response within a week or less.

22 Staff, make note of that.

23 PANEL MEMBER CARRELL: I would move the question,
24 if there's no other public comment.

25 MS. ZETTER: Along the lines of the provisional

1 ballots, once the vote is considered valid and it's sent
2 on to tabulation and the serial number is removed from it,
3 is there a record in memory that remains on the machine
4 that still identifies that vote with the serial number?

5 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: It's
6 my understanding that there is not, but I'll defer to the
7 vendor.

8 MR. CHARLES: The serial number is -- once the
9 election official flags whether that provisional ballot is
10 to be counted or not counted, the serial number is
11 stripped from the ballot and is not able to be reconnected
12 to that ballot.

13 MS. ZETTER: Even in memory?

14 MR. CHARLES: That's my understanding.

15 CHAIRPERSON KYLE: Okay. Sir, could you state
16 your name, please.

17 MR. HOLDER: Joel Holder from Stanislaus County.

18 I've got a question for staff. I'm not sure -- a
19 provisional ballot, is it considered an irregular ballot?

20 CHAIRPERSON KYLE: That is completely off topic,
21 sir. But I think it's an easy one to answer, so we'll
22 answer it for you. I'm going to let our election
23 department because this is -- I think we're getting into a
24 Q and A on election systems, but I'll keep it brief and
25 then I'm going to ask that we move on.

1 John, would you mind taking this question?

2 PANEL MEMBER MOTT-SMITH: It is a regular ballot
3 that is sequestered and kept separate until the voter's
4 eligibility to vote can be determined.

5 MR. HOLDER: Okay. Then the question I have --
6 because if it is kept separate and the -- under 19370, at
7 the poll closing, there is supposed to be a printout from
8 the individual machine of what vote's been made on there.
9 What they're proposing is to have a provisional ballot to
10 be voted on that machine during the election and assigned
11 a number. At the end of the close of day and the poll
12 closing, there is supposed to be a printout of the ballots
13 either as a total for the candidates or individually. And
14 that particular section talks about irregular ballots
15 shall then be attached to the statement of ballots or the
16 statement of votes that's supposed to be signed by the
17 precinct board.

18 So it is very -- I mean, that's why I'm asking,
19 is it a irregular ballot? Because you are talking
20 about -- handle it special -- putting it in an envelope
21 after printing it out. And I'm wondering about does this
22 then mean -- because I know that some counties are not
23 printing out a tabulation of votes on an individual
24 machine at that time of the closing of the polls.

25 So that's why it's a very important question

1 because it goes into the whole thing of setting up a paper
2 trail at the time of the closing of the polls, which the
3 law does require, and will also require -- it says under
4 19230, Section E, that it is these images that are
5 supposed to be used, shall be retained by election
6 officials for the 1 percent manual recount or other
7 recount of the contest.

8 So if it's not happening at that point, but
9 they're talking about the ability to print out these
10 provisional ballots at that time, it raises a whole bunch
11 of areas if they're not printing out these ballots at all.
12 And yet, they're talking here about being able to do that.

13 PANEL MEMBER CARRELL: Mr. Chair, while I believe
14 that there are a host of questions that this gentleman has
15 brought up, they don't relate to what is the motion before
16 us that I've just made to move the question and accept the
17 staff recommendation on these modifications.

18 What this gentleman is talking about are
19 requirements for local county election officials and how
20 they're supposed to conduct the election procedures. And
21 I don't know that that's -- I don't believe that's on
22 point at all with what is before us, which is a
23 modification to the system. So I would again redirect my
24 motion to move the question.

25 CHAIRPERSON KYLE: I'm going to -- hold on. Hold

1 on here. Mr. Carrell, I agree with you. I'm not going to
2 have staff answer that question. I think it's a good
3 question. I think it's an interesting question. And what
4 I'd like to suggest is the same thing I suggested to the
5 person behind you, that you come down after the meeting,
6 talk to our staff, see if they can answer it, and/or come
7 down and say, "Hey, I've got it in writing," or give me a
8 business card and I'll send it to you in writing. I'll
9 e-mail it to you, and we can attempt to address it that
10 way. But I do want to move forward. So I'm going to
11 overrule that question.

12 And I'm going to -- there is a motion that
13 currently stands. So is there a second?

14 MS. McBRIDE: Second.

15 PANEL MEMBER SORIANO: Second.

16 CHAIRPERSON KYLE: Okay.

17 PANEL MEMBER CARRELL: Motion has been moved to
18 accept staff recommendation on approval of proposed
19 modifications to Edge firmware version 4.1J and 4.2 and
20 the ABC Edge hardware version 4.0, and the WinEDS 3.0.99
21 subject to the following conditions as listed in the staff
22 report.

23 CHAIRPERSON KYLE: All those voting aye.

24 (Ayes)

25 CHAIRPERSON KYLE: Any nos?

1 Any abstentions?

2 The ayes have it.

3 Staff, if you can please codify that in your
4 report. And I'm hoping you're taking good notes. And if
5 you're not, please do of the questions being raised.

6 And again let me reiterate, why don't you come
7 down and we can engage in a conversation or set up future
8 ones.

9 I'd like to move to the next agenda item then,
10 Number 2, Diebold Election System, modifications to the
11 AccuVote TS.

12 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: And
13 Brianna Lierman, who is sitting to my left, will handle
14 that agenda item.

15 MS. LIERMAN: Good afternoon. I will be speaking
16 to Agenda Item Number 2, Diebold Election Systems and
17 their modifications to their AccuVote TS. However, due to
18 a backlog at the Federal ITA, staff will not be presenting
19 a report on this. We don't know exactly when we will be
20 in receipt of a report from the ITA. So if the Chair is
21 willing to entertain, staff recommends postponing Agenda
22 Item Number 2 until the week of October 20th.

23 CHAIRPERSON KYLE: Do we have any idea when the
24 ITA report might be forthcoming?

25 MS. LIERMAN: It could be this coming week, next

1 week, or it could be a couple of months because of the
2 backlog.

3 CHAIRPERSON KYLE: When is the most recent
4 communication you had with them?

5 MS. LIERMAN: I believe Dawn had the most recent
6 communication.

7 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
8 spoke with one member --

9 CHAIRPERSON KYLE: Of?

10 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Of
11 Diebold. Basically at this point we don't know. We're at
12 the mercy of the Federal ITAs, it literally could be a
13 week or it could be two months. And still we get those
14 reports, we cannot conduct our state testing. So
15 unfortunately, we don't have a better idea than that.

16 And so staff's recommendation to tentatively
17 postpone the agenda item for possibly two weeks -- if we
18 do get it this week or next week we could conduct testing
19 and then hear it the week of the 20th. That still
20 provides us with the opportunity to allow some counties
21 who will be interested in using the modification in
22 November with that opportunity. However, I don't know --
23 I don't know the likeliness of that. It's out of our
24 hands at this point. And if we do tentatively schedule
25 the meeting for two weeks, we can always postpone it once

1 we determine, you know, more up-to-date information.

2 CHAIRPERSON KYLE: I have two questions then.

3 One is what counties -- what jurisdictions might be
4 affected for November?

5 And the second question related to it is, is
6 there enough time? You're saying that it might not be for
7 a couple of months. I'm just wondering, do we want to set
8 it up in two weeks just to be on the safe side? Is that
9 enough time going into November, or should we just wait
10 until we hear from ITA?

11 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
12 will defer to the vendor to address that, and it's their
13 time line so they're the ones that have to install it.

14 MS. SEILER: Deborah Seiler with Diebold election
15 systems. We are actively engaged in working with our
16 jurisdictions in San Joaquin, Kern, Solano, and San Diego.
17 We would appreciate your indulgence in postponing this for
18 the two-week period. We had a tremendous backlog with
19 only one person working on this. So it's generated a lot
20 of uncertainty. We anticipate having a letter today or
21 tomorrow to indicate successful completion of the testing.
22 What we don't know for sure is the time line on the actual
23 report.

24 CHAIRPERSON KYLE: So if we don't hear from it,
25 what time does it become a date certain where it's

1 critical failure -- an absolute failure in terms of
2 implementing for the counties?

3 MS. SEILER: San Diego has asked us to have our
4 certification in order by, I believe, the 4th of November
5 because they need to know from the Secretary of State by
6 that date whether they can move forward with the touch
7 screens or whether they might have to do something as an
8 interim step, which of course they don't want to have to
9 do.

10 PANEL MEMBER CARRELL: This is for the March
11 election.

12 MS. SEILER: This is for the March election.

13 CHAIRPERSON KYLE: Do any of these have an impact
14 on November election? Dawn or Brianna.

15 MS. MEHLHAFF: Not to my knowledge at this point.
16 Is that correct?

17 MS. SEILER: That's certainly correct. We have
18 other mechanisms for dealing with those counties. But
19 they are all anticipating using this modified version of
20 the AccuVote for March.

21 PANEL MEMBER CARRELL: Can I ask in a nutshell,
22 what are these modifications that are currently under
23 qualification testing?

24 CHAIRPERSON KYLE: Why is that germane, Marc?

25 PANEL MEMBER CARRELL: I'm just wondering what it

1 is that we could be considering in two weeks. What is the
2 item summary in a nutshell so the people --

3 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
4 Deborah may wish to expand on this, but essentially they
5 reduce the weight of the system by roughly half.

6 MS. ALEXANDER: That's the TSX. That's a
7 different system; right?

8 MS. SEILER: The TSX is the modification to the
9 AccuVote which has reduced the weight from approximately
10 48 pounds to approximately 28 pounds. That in a nutshell
11 is the essence of the modification.

12 PANEL MEMBER CARRELL: It's a smaller version?

13 CHAIRPERSON KYLE: Smaller physical -- I'm glad
14 you added pounds because when you said weight, I thought
15 you meant waiting time. I can wait 20 seconds. I can
16 wait 10 seconds.

17 All right. Any other panel questions?

18 So you're proposing -- I'm still unclear. I hear
19 the suggestion. I think it's a good one, for putting it
20 off for an indeterminate period of time prior to
21 November it's unclear in my mind whether there's an impact
22 in November and what the proprietary or just common sense,
23 do we set it for October, hoping for November. But I'm
24 not hearing November. I'm hearing March. In that case,
25 why not just set it for the middle of November?

1 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:

2 Essentially, at this point in time, like Deborah Seiler
3 mentioned, Solano County wants to go forward with
4 purchasing this equipment and deploying this in time for
5 their March election. If they don't have certification at
6 the state level, then Solano county will not --

7 CHAIRPERSON KYLE: By when?

8 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: By
9 November 4th.

10 CHAIRPERSON KYLE: When is the election?

11 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Well,
12 they're March. The Solano County that would be impacted
13 would be the March presidential primary. But in order for
14 them to go forward in terms of purchasing and deploying
15 and acceptance testing and everything else that goes along
16 with doing a new voting system, they have instructed the
17 vendor that they would have to have certification by this
18 panel prior to November 4th. Otherwise, at that time
19 Solano County may seek other options in terms of an
20 optical scan system.

21 PANEL MEMBER MOTT-SMITH: Deborah, did you want
22 to add to that?

23 MS. SEILER: Just to add to that, really
24 San Diego is the one who has imposed the November 4th
25 deadline because they do have more units. All of the

1 counties that I mentioned, Solano County, San Joaquin,
2 Kern, do want to begin their acceptance testing just as
3 soon as they possibly can. And they were anticipating
4 beginning the acceptance testing at the end of this month
5 or the first part of November.

6 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: And I
7 misspoke when I said Solano. I meant San Diego. I
8 apologize.

9 CHAIRPERSON KYLE: Why not set it for October
10 27th. This is some time -- you're expecting some kind of
11 report today or tomorrow?

12 MS. SEILER: Yes. We have completed the testing.

13 CHAIRPERSON KYLE: Okay. It will be completed,
14 but the report is who knows when.

15 MR. MARCH: What's being certified, sir? Which
16 pieces?

17 CHAIRPERSON KYLE: You asked that question
18 before.

19 PANEL MEMBER CARRELL: It would be the
20 modification to the AccuVote TS system.

21 MR. MARCH: Right. So you have the firmware at
22 the TS. What about the operating system at the touch
23 screen terminal? Is that being certified?

24 CHAIRPERSON KYLE: I'm not going to answer that
25 question. I want to try to figure out what's the

1 practical time to bring this up. You're welcome to come
2 over here and talk about the system in general with the
3 staff afterwards or the vendor, and/or bring it up when we
4 have the panel here and we're actually hearing it. Right
5 now from what I can tell, it's procedural. I'm just
6 trying to squeeze it in so we can hit November 4th and/or
7 get enough time to get a report and have our folks review
8 it, et cetera, et cetera. And that's why I'm asking
9 October 21st versus October 27.

10 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: The
11 27th certainly works for staff. That gives us more time
12 in case we do get the report a week later, and it gives
13 our expert technical consultant more time, and it still
14 meets the deadline.

15 PANEL MEMBER CARRELL: How long will state
16 testing certification -- the analysis of the testing take?

17 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: On
18 average, three days.

19 PANEL MEMBER CARRELL: Okay.

20 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: It's
21 pretty extensive testing he conducts.

22 PANEL MEMBER CARRELL: Do we have any knowledge
23 about his schedule and whether he's even available during
24 those weeks, if necessary?

25 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: He

1 understands the time line associated with this, so he will
2 be able to conduct the testing.

3 PANEL MEMBER GUTIERREZ: While we're looking at
4 the calendar, Mr. Wood, what is the notice requirements
5 for a meeting?

6 ELECTIONS COUNSEL WOOD: In this case,
7 Mr. Gutierrez, what the panel would be doing is merely
8 postponing an item. You would not be closing this
9 particular meeting. You'd simply be postponing that item.
10 You would not have an additional notice requirement.

11 PANEL MEMBER GUTIERREZ: The notice would occur
12 when we set the time?

13 ELECTIONS COUNSEL WOOD: That's correct.

14 PANEL MEMBER CARRELL: If we set a second
15 continuation of this hearing for the 21st or 22nd and it
16 turns out it couldn't occur until the 21st or 22nd, we
17 could postpone it again and there's no -- that's another
18 week and the notice requirement doesn't play into the --

19 ELECTIONS COUNSEL WOOD: As long as the item
20 remains open and you're not closing the meeting as to that
21 item, that would be accurate. You may wish just as public
22 information purposes to make additional notification, but
23 you would not have to go through the formal notice
24 process.

25 PANEL MEMBER CARRELL: We wouldn't have to wait

1 30 days. We do the same process for notice. We just
2 don't have to wait 30 days?

3 ELECTIONS COUNSEL WOOD: That's correct.

4 CHAIRPERSON KYLE: Kim.

5 MS. ALEXANDER: I'm a little confused about this
6 agenda item, because when I saw it on your agenda, I
7 assumed it was a modification to the existing AccuVote TS
8 system that I understand weighs about 45 pounds and is
9 used in Alameda and Plumas Counties. The newer model
10 that's being shown by Diebold at some county election
11 meetings, supervisors meetings back in January in Santa
12 Clara I believe is the TSX which is a different model that
13 weighs much less than was said earlier. The TSX is not
14 the item that's on your agenda. The TS is the item that's
15 on your agenda. I'm trying to get clear about what is
16 this agenda item. Is it modifications of the existing TS
17 systems that are in Alameda and Plumas Counties, or is it
18 a new model altogether that's being sold to Kern, San
19 Joaquin, and Solano Counties and possibly San Diego?

20 CHAIRPERSON KYLE: Staff, could you please --
21 good question.

22 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF:
23 Right. When everything was submitted to the federal ITAs,
24 at that time is when we received the material, and it is
25 considered -- Diebold is calling it the TSX, however it's

1 considered a modification to the current touch screen
2 system, although it does look different. And this is
3 different packaging in the sense it has a smaller unit,
4 the components are essentially the same between the two
5 units. It's just packaged differently. And they have
6 done some modifications that are being tested, but
7 essentially it's just a modification to their new unit --
8 or their older unit, just packaged a little bit
9 differently. At the time we got the stuff, that's how we
10 listed it on there but --

11 CHAIRPERSON KYLE: So which is it? Is it a
12 modification to the old unit TS?

13 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: A
14 modification to the old unit. They are now going to call
15 it TSX.

16 CHAIRPERSON KYLE: Is there a TSX that's a new
17 unit that has yet to be certified?

18 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: That
19 is what is in federal testing. The TSX is essentially a
20 modification to the system that's currently certified in
21 the state. They just for practical purposes -- they just
22 did the X on the end in terms of identification. But it's
23 a modification of their currently certified system. It
24 will look smaller because it is smaller.

25 PANEL MEMBER CARRELL: It's like T2.

1 MS. ALEXANDER: Mark, what I'm getting at for
2 people who are trying to understand what's going on with
3 the voting systems in California, they're trying to follow
4 the model numbers. And the TSX is what's being marketed
5 to the counties. The TSX is what is going to be before
6 this panel for certification. It should be on the agenda
7 as the TSX so that it reflects what's being --

8 CHAIRPERSON KYLE: I understand your point.

9 MS. ALEXANDER: -- marketed.

10 CHAIRPERSON KYLE: It's a very good point, Kim,
11 and I understand it. I'm going to follow-up on this with
12 staff for the subsequent meeting so there's no ambiguity
13 as to that.

14 PANEL MEMBER CARRELL: Mr. Chair, are you
15 selecting a date here?

16 CHAIRPERSON KYLE: Before we do that -- yes, we
17 are going to do that momentarily. I want to make a note
18 of that to follow-up on, please.

19 PANEL MEMBER CARRELL: For the next meeting to
20 agendize it as --

21 CHAIRPERSON KYLE: What it really is.

22 PANEL MEMBER CARRELL: A postponement of this
23 item, which is a modification of TS/certification of the
24 TSX. Thank you.

25 CHAIRPERSON KYLE: Before we go to that, I saw

1 one last question over here.

2 MS. ZETTER: You can tell me whether or not this
3 is an appropriate question to ask at this point. But if
4 they're doing modifications to the TS system and then
5 calling it TSX after the modifications, do those
6 modifications include changes that were recommended to be
7 done to the TS system by the SCIC report Maryland
8 commissioned?

9 CHAIRPERSON KYLE: That's a very good question.
10 I think that's going to be appropriate at the next
11 hearing.

12 Let's pick a date.

13 Somebody make a note of that last question,
14 please.

15 My concern about setting it for the 21st, which
16 is the staff recommendation, is I'm not sure that allows
17 enough time for, A, getting the report back from ITA --
18 the actual report rather than just we finish the testing
19 and then giving our folks adequate time. You can dissuade
20 me of my concern and tell me I shouldn't worry and we
21 should set it for the 21st, or indulge me and say "yes,
22 let's err on the side of caution and let's set it for the
23 27th."

24 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
25 would err on the side of caution and go with the week of

1 the 27th.

2 CHAIRPERSON KYLE: How about that Tuesday, the
3 28th. Is that a Tuesday? 1:00 o'clock.

4 So do I hear a second?

5 PANEL MEMBER CARRELL: If you're making it as a
6 motion, you have a second.

7 CHAIRPERSON KYLE: So moved.

8 PANEL MEMBER CARRELL: Seconded.

9 CHAIRPERSON KYLE: So we're rolling over this
10 agenda item to October 28th, Tuesday, 1:00 p.m. We're
11 going to take note of issues raised pertaining to the
12 classification of the item as either a modification to an
13 existing system or certification of a new system. We'll
14 be able to address that and some of the other questions.
15 And it's conditioned on whether or not the ITA actually
16 issues a report and whether we have adequate time to test
17 and issue our own report. This is subject to those three
18 conditions. We'll hold it on October 27th. Otherwise, it
19 will remain open, and we'll roll it over to the next most
20 appropriate date.

21 I have two more agenda items; one, certification
22 procedures. I've been informed by staff that those are
23 not ready.

24 PANEL MEMBER MOTT-SMITH: You're taking a vote on
25 this?

1 CHAIRPERSON KYLE: I'm sorry. Thank you, John.

2 PANEL MEMBER MOTT-SMITH: I thought I misheard
3 that.

4 CHAIRPERSON KYLE: No, you didn't. I appreciate
5 that.

6 PANEL MEMBER GUTIERREZ: I have a question.

7 CHAIRPERSON KYLE: Why don't you ask your
8 question first.

9 PANEL MEMBER GUTIERREZ: I would be very
10 interested in having staff talk to us about the notion of
11 how certified equipment is characterized a marketing
12 environment. I found that exchange to be terribly
13 confusing about the machines. So if we certify something
14 and it has a name before us, I want to hear what the
15 thoughts are about how that is marketed as being certified
16 by the Secretary of State.

17 CHAIRPERSON KYLE: Good point.

18 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: In
19 terms of --

20 PANEL MEMBER GUTIERREZ: Not now.

21 CHAIRPERSON KYLE: Not now.

22 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: I
23 have an answer now.

24 PANEL MEMBER GUTIERREZ: The answer is
25 inappropriate.

1 CHAIRPERSON KYLE: That's up to the Chair.

2 PANEL MEMBER GUTIERREZ: I'm sorry.

3 CHAIRPERSON KYLE: Don't answer.

4 VOTER OUTREACH PROGRAMS DIRECTOR MEHLHAFF: Thank
5 you.

6 CHAIRPERSON KYLE: But I would like to have that
7 conversation.

8 PANEL MEMBER CARRELL: So vote.

9 CHAIRPERSON KYLE: Yes. All those in favor of
10 the motion?

11 (Ayes)

12 CHAIRPERSON KYLE: Any objections?

13 Any abstentions?

14 Hearing none. We're rolling over the item to
15 October 28th.

16 Third agenda item, certification procedures, I've
17 been informed by staff prior to the meeting that they are
18 not prepared to make the presentation regarding these
19 procedures. Apparently they were preoccupied with
20 something known as the recall, an 800 pound gorilla that
21 sat in the middle of the room and sucked all the air out
22 of the room. So they're a little bit delayed.

23 PANEL MEMBER CARRELL: Mr. Chair, I would commit
24 to working with staff to making sure that we can get this
25 item prepared and ready so that it can be heard at the

1 same meeting on the 28th.

2 CHAIRPERSON KYLE: On the 28th?

3 PANEL MEMBER CARRELL: Yeah.

4 CHAIRPERSON KYLE: Do I hear a second?

5 PANEL MEMBER GUTIERREZ: What's the motion?

6 CHAIRPERSON KYLE: To roll over --

7 PANEL MEMBER GUTIERREZ: Second.

8 CHAIRPERSON KYLE: -- Item 3 to the 28th as well.

9 PANEL MEMBER GUTIERREZ: Second.

10 CHAIRPERSON KYLE: Any objections? Hearing
11 none -- I'm sorry, go ahead.

12 MR. MARCH: Let me say this. There's a question
13 that needs to be asked about certification procedures
14 prior to the 28th. I don't expect an answer right now.
15 But get ready for it. Windows CE --

16 CHAIRPERSON KYLE: Hold on a second. Let me just
17 conclude that we're rolling over to the 28th, and then
18 we'll go back to your room. So hearing no objections to
19 rolling it over, we'll roll it over to the 28th.

20 And it's Mr. March; right?

21 MR. MARCH: Mr. March. Okay. There is a large
22 amount of code on the AccuVote TS or TSX, whatever,
23 terminal that has not been certified by federal ITAs that
24 should have been. And that code is Windows CE. Windows
25 CE is not like the other versions of Windows, and it's

1 completely customized --

2 CHAIRPERSON KYLE: Mr. March, hold on one second.
3 I'm going to cut you off. I don't want to hear it right
4 now.

5 MR. MARCH: You've been hiding -- sorry --
6 Mr. Mott-Smith has been hiding in his office from me when
7 I visited at least eight or nine times the past two weeks.
8 It's the only time I've got him in front of me. And
9 you're shutting me down again.

10 CHAIRPERSON KYLE: It's not Mr. Mott-Smith. I
11 hear your point. I don't want to hear this right now. I
12 think you have a legitimate point, I believe. I don't
13 know until I hear the full question. Again, I would ask
14 you to come up and state your question to staff, and I'd
15 prefer to see it in writing, quite honestly. I'll give
16 you my business card. You can e-mail it to me. I'd be
17 happy to get it to the Elections Department staff that can
18 answer your question. And if it's in writing, we can
19 answer it a lot more specifically and concretely. But I'm
20 not going to entertain it right now. I don't want to hear
21 about Windows CE at this point.

22 I want to go to one more point. Someone
23 submitted a letter from Common Wheel Institute. Is that
24 person here?

25 MR. HOLDER: I did it for them.

1 CHAIRPERSON KYLE: This is exactly the kind of
2 written documentation where we can -- it has to deal with
3 certification.

4 Mr. March, you're not the only one with concern
5 about that.

6 And this is exactly the kind of thing that we can
7 take and respond to. So I'm going to ask that this be
8 formally entered into the record today. We're not going
9 to respond it to now orally. We'll take it under
10 submission and we'll have either a written response or
11 oral response by the 28th or prior to that time. And I
12 hope prior to the 28th.

13 And you are the author of that?

14 MR. HOLDER: No. I delivered it for them. They
15 could not make it up today.

16 CHAIRPERSON KYLE: What is your name again?

17 MR. HOLDER: Joe Holder.

18 CHAIRPERSON KYLE: Joe, if you wouldn't mind
19 coming up afterwards, we can get address for you and cc
20 you on that. And that's exactly the kind of thing that
21 would make it -- facilitate communications.

22 Having no other agenda items before the Panel,
23 I'm going to move for, look for a motion.

24 PANEL MEMBER CARRELL: I move to adjourn.

25 PANEL MEMBER GUTIERREZ: Second.

1 CHAIRPERSON KYLE: Any objections?

2 So moved.

3 (Thereupon the Voting Systems and Procedures

4 Panel meeting adjourned at 2:18 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 17th day of October, 2003.

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23 TIFFANY C. KRAFT, CSR, RPR

24 Certified Shorthand Reporter

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